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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JESLER BATEN ROJAS, *individually and on behalf of others similarly situated,*

Plaintiff,

-against-

H K PARIS INC. (d/b/a VOILA 76 COUNTRY KITCHEN), KENNETH GIN and SHANTALL DOE

Defendants.

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COMPLAINT

COLLECTIVE ACTION UNDER 29 U.S.C. § 216(b)

ECF Case

Plaintiff Jesler Baten Rojas ("Plaintiff Baten" or "Mr. Baten"), individually and on behalf of others similarly situated, by and through his attorneys, Michael Faillace & Associates, P.C., upon information and belief, and as against each of Defendants H K Paris Inc. (d/b/a Voila 76 Country Kitchen) ("Defendant Corporation"), Kenneth Gin and Shantall Doe (collectively, "Defendants"), alleges as follows:

NATURE OF ACTION

1. Plaintiff Baten is a former employee of Defendants H K Paris Inc. (d/b/a Voila 76 Country Kitchen), Kenneth Gin and Shantall Doe.

2. Voila 76 country Kitchen is a restaurant owned by Kenneth Gin and Shantall Doe located at 1452 Second Avenue, New York, New York 10021.

3. Upon information and belief, Defendants Kenneth Gin and Shantall Doe serve or served as owners, managers, principals and/or agents of Defendant Corporation, and through this corporate entity operate the restaurant.

4. Plaintiff Baten is a former employee of Defendants.

5. Plaintiff Baten was ostensibly employed as a delivery worker, but he was required to spend several hours each day performing non-tipped duties unrelated to deliveries, including but not limited to **cleaning plates, preparing food (e.g. cutting vegetables), stocking food and other items (e.g. bottled drinks), bringing up soups from the basement for the kitchen staff, refilling the refrigerator up with vegetables, bringing up cooked food from the basement, cleaning walls, cleaning rat traps and droppings, sweeping the floor, and twisting and tying up cardboard boxes** (hereinafter, “non-delivery, non-tip duties”).

6. Plaintiff Baten regularly worked for Defendants in excess of 40 hours per week without appropriate minimum wage or overtime compensation for any of the hours that he worked.

7. Rather, Defendants failed to maintain accurate recordkeeping of his hours worked and failed to pay Plaintiff Baten appropriately for any hours worked over 40, either at the straight rate of pay or for any additional overtime premium.

8. Further, Defendants failed to pay Plaintiff Baten the required “spread of hours” pay for any day in which he had to work over 10 hours a day.

9. Defendants employed and accounted for Plaintiff Baten as a delivery worker in their payroll, but in actuality his duties included a significant amount of time spent performing the non-delivery, non-tipped duties alleged above.

10. At all times, regardless of duties, Defendants paid Plaintiff Baten and all other delivery workers at a rate that was lower than the required tip-credit rate.

11. However, under both the FLSA and NYLL, Defendants were not entitled to take a tip credit because Plaintiff Baten's non-tipped duties exceeded 20% of each workday, (12 N.Y.C.R.R. § 146).

12. Upon information and belief, Defendants employed the policy and practice of disguising Plaintiff Baten's actual duties in payroll records to avoid paying Plaintiff Baten at the minimum wage rate, and to enable them to pay Plaintiff Baten at the lower tip-credited rate (which they still failed to do) by designating him as a delivery worker instead of a non-tipped employee.

13. Defendants' conduct extended beyond Plaintiff Baten to all other similarly situated employees.

14. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Baten and other employees to work in excess of forty (40) hours per week without providing them the minimum wage and overtime compensation required by federal and state law and regulations.

15. Plaintiff Baten now brings this action on behalf of himself, and other similarly situated individuals, for unpaid minimum and overtime wages pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 *et seq*. ("FLSA"), the New York Labor Law ("NYLL") §§190 and 650 *et seq*., and "overtime wage order" respectively codified at N.Y.C.R.R. Tit. 12 §§ 142-2.2, 2.4), and the "spread of hours" and overtime wage orders of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6 (herein the

"Spread of Hours Wage Order"), including applicable liquidated damages, interest, attorneys' fees, and costs.

16. Plaintiff Baten seeks certification of this action as a collective action on behalf of himself, individually, and all other similarly situated employees and former employees of Defendants pursuant to 29 U.S.C. § 216(b).

JURISDICTION AND VENUE

17. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1531 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff Baten's state law claims is conferred by 28 U.S.C. § 1367(a).

18. Venue is proper in this district under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate their businesses in this district, and Plaintiff Baten was employed by Defendants in this district.

PARTIES

Plaintiff Jesler Baten Rojas

19. Plaintiff Baten is an adult individual residing in New York County, New York.

20. Plaintiff Baten was employed by Defendants from approximately November 2015 until on or about November 21, 2016.

21. Pursuant to 29 U.S.C. § 216(b), Plaintiff Baten consents to being a party and brings these claims based upon the allegations herein as a representative party of a prospective class of similarly situated individuals under 29 U.S.C. § 216(b).

Defendants

22. At all times relevant to this Complaint, Defendants own, operate, and/or control a restaurant located at 1452 Second Avenue, New York, New York 10021 under the name "Voila 76 Country Kitchen."

23. Upon information and belief, H K Paris Inc. ("Defendant Corporation") is a corporation organized and existing under the laws of the State of New York. Upon information and belief, it maintains its principal place of business at 1452 Second Avenue, New York, New York 10021.

24. Defendant Kenneth Gin is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Kenneth Gin is sued individually and in his capacity as an owner, officer and/or agent of the Defendant Corporation.

25. Defendant Kenneth Gin possesses or possessed operational control over the Defendant Corporation, an ownership interest in the Defendant Corporation and/or controlled significant functions of the Defendant Corporation.

26. Defendant Kenneth Gin determined the wages and compensation of the employees of Defendants, including Plaintiff Baten, established the schedules of the employees, maintained employee records and had the authority to hire and fire employees.

27. Defendant Shantall Doe is an individual engaging (or who was engaged) in business within this judicial district during the relevant time period. Defendant Shantall Doe is sued individually and in her capacity as an owner, officer and/or agent of the Defendant Corporation.

28. Defendant Shantall Doe possesses or possessed operational control over the Defendant Corporation, an ownership interest in the Defendant Corporation and/or controlled significant functions of the Defendant Corporation.

29. Defendant Shantall Doe determined the wages and compensation of the employees of Defendants, including Plaintiff Baten, established the schedules of the employees, maintained employee records and had the authority to hire and fire employees.

FACTUAL ALLEGATIONS

Defendants Constitute Joint Employers

30. Defendants operate a restaurant located at 1452 Second Avenue, New York, New York 10021.

31. Individual Defendants Kenneth Gin and Shantall Doe possess operational control over the Defendant Corporation, possess an ownership interest in the Defendant Corporation, and control significant functions of the Defendant Corporation.

32. Defendants are associated and joint employers, act in the interest of each other with respect to employees, pay employees by the same method and share control over the employees.

33. Each Defendant possessed substantial control over Plaintiff Baten's (and other similarly situated employees') working conditions, and over the policies and practices with respect to the employment and compensation of Plaintiff Baten, and all similarly situated individuals, referred to herein.

34. Defendants jointly employed Plaintiff Baten, and all similarly situated individuals, and are Plaintiff Baten's (and all similarly situated individuals') employers within the meaning of 29 U.S.C. 201 *et seq*. and the NYLL.

35. In the alternative, Defendants constitute single employers of Plaintiff Baten and/or similarly situated individuals.

36. Upon information and belief, individual defendants Kenneth Gin and Shantall Doe operate the Defendant Corporation as either an alter ego of themselves and/or fail to operate the Defendant Corporation as a legal entity separate and apart from themselves by, among other things:

(a) failing to adhere to the corporate formalities necessary to operate Defendant Corporation as a separate and legally distinct entity;

(b) defectively forming or maintaining the Defendant Corporation by, among other things, failing to hold annual meetings or maintaining appropriate corporate records;

(c) transferring assets and debts freely as between all Defendants;

(d) operating the Defendant Corporation for their own benefit as the sole or majority shareholder;

(e) operating the Defendant Corporation for their own benefit and maintaining control over it as a closed corporation or closely controlled entity;

(f) intermingling assets and debts of their own with the Defendant Corporation;

(g) diminishing and/or transferring assets of the Defendant Corporation to protect their own interests; and

(h) other actions evincing a failure to adhere to the corporate form.

37. At all relevant times, Defendants were Plaintiff Baten's employers within the meaning of the FLSA and NYLL.

38. Defendants had the power to hire and fire Plaintiff Baten, controlled the terms and conditions of his employment, and determined the rate and method of any compensation in exchange for Plaintiff Baten's services.

39. In each year from 2015 to 2016, Defendants, both individually and jointly, had gross annual volume of sales of not less than $500,000 (exclusive of excise taxes at the retail level that are separately stated).

40. In addition, upon information and belief, Defendants and/or their enterprises were directly engaged in interstate commerce. For example, numerous items that were sold in the restaurant on a daily basis, such as meat and lettuce, were produced outside of the State of New York.

Individual Plaintiff

41. Plaintiff Baten is a former employee of Defendants ostensibly employed as a delivery worker, but who spent more than 20% of each shift performing the non-delivery, non-tip duties outlined above.

42. Plaintiff Baten seeks to represent a class of similarly situated individuals under 29 U.S.C. § 216(b).

Plaintiff Jesler Baten Rojas

43. Plaintiff Baten was employed by Defendants from approximately November 2015 until on or about November 21, 2016.

44. At all relevant times, Plaintiff Baten was ostensibly employed by Defendants as a delivery worker.

45. However, Plaintiff Baten spent more than 20% of each work day performing the non-delivery, non-tip duties outlined above.

46. Plaintiff Baten regularly handled goods in interstate commerce, such as meat and vegetables produced outside of the State of New York.

47. Plaintiff Baten's work duties required neither discretion nor independent judgment.

48. Throughout his employment with Defendants, Plaintiff Baten regularly worked in excess of 40 hours per week.

49. From approximately November 2015 until on or about December 2015, Plaintiff Baten worked from approximately 10:00 a.m. until on or about 9:00 p.m. seven days a week (typically 77 hours per week).

50. From approximately January 2016 until on or about November 21, 2016 , Plaintiff Baten worked from approximately 10:00 a.m. until on or about 9:00 p.m. four days a week and from approximately 10:00 a.m. until on or about 6:00 p.m. two days a week (typically 60 hours per week).

51. Throughout his employment with Defendants, Plaintiff Baten was paid his wages in cash.

52. From approximately November 2015 until on or about November 21, 2016, defendants paid Plaintiff Baten $5.00 per hour.

53. Although defendants granted Plaintiff Baten a 20 minute break to eat, they constantly required him to interrupt the break to perform work duties.

54. Plaintiff Baten was never notified by Defendants that his tips would be included as an offset for wages.

55. Defendants did not account for these tips in any daily, weekly or other accounting of Plaintiff Baten's wages.

56. Defendants did not provide Plaintiff Baten with an accurate statement of wages with each payment of wages, as required by NYLL 195(3).

57. Instead, defendants required Plaintiff Baten to sign a document the contents of which he was not allowed to view in order to get his weekly pay.

58. Defendants never provided Plaintiff Baten with a written notice, in English and in Spanish (Plaintiff Baten's primary language), of his rate of pay, employer's regular pay day, and such other information as required by NYLL §195(1).

59. No notification, either in the form of posted notices or other means, was ever given to Plaintiff Baten regarding overtime and wages under the FLSA and NYLL.

60. Defendants required Plaintiff Baten to purchase "tools of the trade" with his own funds—including a bicycle a vest, a helmet, a bike chain and additional costs for maintenance of the bicycle.

Defendants' General Employment Practices

61. Defendants regularly required their employees, including Plaintiff Baten, to work in excess of forty (40) hours per week without paying them the proper minimum wage, overtime, or spread of hours compensation.

62. At all times relevant to this Complaint, Defendants maintained a policy and practice of requiring Plaintiff Baten (and all similarly situated employees) to work in excess of forty (40) hours per week without paying them appropriate minimum wage and/or overtime compensation, as required by federal and state laws.

63. At no time did Defendants inform their employees, including Plaintiff Baten, that they had reduced their hourly wages by a tip allowance.

64. Defendants required all delivery workers, including Plaintiff Baten, to perform general non-delivery, non-tipped restaurant tasks in addition to their primary duties as delivery workers.

65. Plaintiff Baten, and all similarly situated employees, were ostensibly employed as tipped employees by Defendants, although their actual duties included a significant amount of time spent performing non-delivery, non-tipped duties.

66. Plaintiff Baten and all other delivery workers were not even paid at the required lower tip-credit rate by Defendants. However, under state law, Defendants were not entitled to a tip-credit because the delivery workers' and Plaintiff Baten's non-tipped duties exceeded 20% of each workday (or 2 hours a day, whichever was less) (12 N.Y.C.R.R. § 146).

67. New York State regulations provide that an employee cannot be classified as a tipped employee on any day in which he has been assigned to work in an occupation in which

tips are not customarily received. (12 N.Y.C.R.R. §§137-3.3 and 137-3.4). Similarly, under federal regulation 29 C.F.R. §531.56(e), an employer may not take a tip-credit for any employee time if that time is devoted to a non-tipped occupation.

68. The delivery workers', including Plaintiff Baten's, duties were not incidental to their occupation as delivery workers, but instead constituted entirely unrelated general restaurant work with duties, including the non-tipped duties described above.

69. In violation of federal and state law as codified above, Defendants classified Plaintiff Baten and other delivery workers as tipped employees but did not even pay them at the tip-credited rate when they should have classified them as non-tipped employees and paid them at the minimum wage rate.

70. Plaintiff Baten was paid his wages entirely in cash.

71. Defendants required Plaintiff Baten to sign a document the contents of which he was not allowed to review in order to get paid each week.

72. Upon information and belief, these practices were done to disguise the actual number of hours Plaintiff Baten, and similarly situated employees, worked and to avoid paying them properly for their (1) full hours worked, (2) minimum wage, (3) overtime wages, and (4) spread of hours pay.

73. Defendants failed to post required wage and hour posters in the restaurant, and did not provide their employees, including Plaintiff Baten, with statutorily required wage and hour records or statements of their pay received, in part so as to hide Defendants' violations of the wage and hour laws, and to take advantage of their employees', including Plaintiff Baten's, relative lack of sophistication in wage and hour laws.

74. Defendants failed to provide Plaintiff Baten and other employees with wage statements at the time of each payment of wages containing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; the number of regular hours worked; and the number of overtime hours worked, as required by NYLL §195(3).

75. Defendants failed to provide Plaintiff Baten and other employees, at the time of hiring and on or before February 1 of each subsequent year, a statement in English and the employees' primary language, containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; and the telephone number of the employer, as required by New York Labor Law §195(1).

FLSA COLLECTIVE ACTION CLAIMS

76. Plaintiff Baten brings his FLSA minimum and overtime wages, and liquidated damages claims as a collective action pursuant to FLSA Section 16(b), 29 U.S.C. § 216(b), on behalf of all similarly situated persons who are or were employed by Defendants, or any of them,

on or after the date that is three years before the filing of the complaint in his case (the "FLSA Class Period"), as employees of Defendants (the "FLSA Class").

77. At all relevant times, Plaintiff Baten, and other members of the FLSA Class who are and/or have been similarly situated, had substantially similar job requirements and pay provisions, and have been subject to Defendants' common practices, policies, programs, procedures, protocols and plans of willfully failing and refusing to pay them the required minimum wage and overtime pay of one and one-half times his regular rates for work in excess of forty (40) hours per workweek under the FLSA.

78. The claims of Plaintiff Baten stated herein are similar to those of the other employees.

FIRST CAUSE OF ACTION
VIOLATION OF THE FLSA MINIMUM WAGE PROVISIONS

79. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

80. At all times relevant to this action, Defendants were Plaintiff Baten's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act. 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Baten (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for their employment.

81. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

82. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act. 29 U.S.C. § 203 (r-s).

83. Defendants failed to pay Plaintiff Baten (and the FLSA Class members) at the applicable minimum hourly rate, in violation of 29 U.S.C. § 206(a).

84. Defendants' failure to pay Plaintiff Baten (and the FLSA Class members) at the applicable minimum hourly rate was willful within the meaning of 29 U.S.C. § 255(a).

85. Plaintiff Baten (and the FLSA Class members) were damaged in an amount to be determined at trial.

SECOND CAUSE OF ACTION
VIOLATION OF THE FLSA OVERTIME PROVISIONS

86. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

87. At all times relevant to this action, Defendants were Plaintiff Baten's employers (and employers of the putative FLSA Class members) within the meaning of the Fair Labor Standards Act. 29 U.S.C. § 203(d). Defendants had the power to hire and fire Plaintiff Baten (and the FLSA class members), controlled the terms and conditions of employment, and determined the rate and method of any compensation in exchange for his employment.

88. At all times relevant to this action, Defendants were engaged in commerce or in an industry or activity affecting commerce.

89. Defendants constitute an enterprise within the meaning of the Fair Labor Standards Act. 29 U.S.C. § 203 (r-s).

90. Defendants, in violation of 29 U.S.C. § 207 (a)(1) of the FLSA, failed to pay Plaintiff Baten (and the FLSA Class members) overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

91. Defendants' failure to pay Plaintiff Baten (and the FLSA Class members) overtime compensation was willful within the meaning of 29 U.S.C. § 255(a).

92. Plaintiff Baten (and the FLSA Class members) were damaged in an amount to be determined at trial.

THIRD CAUSE OF ACTION
VIOLATION OF THE NEW YORK MINIMUM WAGE RATE

93. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

94. At all times relevant to this action, Defendants were Plaintiff Baten's employers within the meaning of the N.Y. Lab. Law §§ 2 and 651. Defendants had the power to hire and fire Plaintiff Baten (and the FLSA Class members), controlled terms and conditions of employment, and determined the rates and methods of any compensation in exchange for employment.

95. Defendants, in violation of NYLL § 652(1) and the supporting regulations of the New York State Department of Labor, paid Plaintiff Baten (and the FLSA Class members) less than the minimum wage.

96. Defendants' failure to pay Plaintiff Baten (and the FLSA Class members) minimum wage was willful within the meaning of N.Y. Lab. Law § 663.

97. Plaintiff Baten (and the FLSA Class Members) were damaged in an amount to be determined at trial.

FOURTH CAUSE OF ACTION
VIOLATION OF THE OVERTIME PROVISIONS OF THE NEW YORK STATE LABOR LAW

98. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

99. Defendants, in violation of N.Y. Lab. Law § 190 *et seq*. and supporting regulations of the New York State Department of Labor, failed to pay Plaintiff Baten overtime compensation at rates of one and one-half times the regular rate of pay for each hour worked in excess of forty hours in a workweek.

100. Defendants' failure to pay Plaintiff Baten overtime compensation was willful within the meaning of N.Y. Lab. Law § 663.

101. Plaintiff Baten was damaged in an amount to be determined at trial.

FIFTH CAUSE OF ACTION
VIOLATION OF THE SPREAD OF HOURS WAGE ORDER OF THE NEW YORK COMISSIONER OF LABOR

102. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

103. Defendants failed to pay Plaintiff Baten one additional hour's pay at the basic minimum wage rate before allowances for each day Plaintiff Baten's spread of hours exceeded ten hours in violation of NYLL §§ 190 *et seq*. and 650 *et seq*. and the wage order of the New York Commissioner of Labor codified at N.Y. COMP. CODES R. & REGS. Tit. 12, § 146-1.6(a) (2009).

104. Defendants' failure to pay Plaintiff Baten an additional hour's pay for each day Plaintiff Baten's spread of hours exceeded ten hours was willful within the meaning of NYLL § 663.

105. Plaintiff Baten was damaged in an amount to be determined at trial.

SIXTH CAUSE OF ACTION
VIOLATION OF THE NOTICE AND RECORDKEEPING REQUIREMENTS OF THE NEW YORK LABOR LAW

106. Plaintiff Baten repeats and re-alleges all paragraphs above as though fully set forth herein.

107. Defendants failed to provide Plaintiff Baten with a written notice, in English and in Spanish (Plaintiff Baten's primary language), of his rate of pay, regular pay day, and such other information as required by NYLL §195(1).

108. Defendants are liable to Plaintiff Baten in the amount of $5,000, together with costs and attorneys' fees.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE WAGE STATEMENT PROVISIONS OF THE NEW YORK LABOR LAW

109. Plaintiff Baten repeats and re-alleges all paragraphs above as though set forth fully herein.

110. Defendants did not provide Plaintiff Baten with a statement of wages with each payment of wages, as required by NYLL 195(3).

111. Defendants are liable to Plaintiff Baten in the amount of $5,000, together with costs and attorneys' fees.

EIGHTH CAUSE OF ACTION
(RECOVERY OF EQUIPMENT COSTS)

112. Plaintiff Baten repeats and re-alleges all paragraphs above as though set forth fully herein.

113. Defendants required Plaintiff Baten to pay, without reimbursement, the costs and

expenses for purchasing and maintaining equipment and "tools of the trade" required to perform his job, such as bicycles, further reducing his wages in violation of the FLSA and NYLL. 29 U.S.C. § 206(a); 29 C.F.R § 531.35; N.Y. Lab. Law §§ 193 and 198-b.

114. Plaintiff Baten was damaged in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Baten respectfully request that this Court enter judgment against Defendants by:

(a) Designating this action as a collective action and authorizing prompt issuance of notice pursuant to 29 U.S.C. § 216(b) to all putative class members, apprising them of the pendency of this action, and permitting them promptly to file consents to be plaintiffs in the FLSA claims in this action;

(b) Declaring that Defendants violated the minimum wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Baten and the FLSA class members;

(c) Declaring that Defendants violated the overtime wage provisions of, and associated rules and regulations under, the FLSA as to Plaintiff Baten and the FLSA class members;

(d) Declaring that Defendants violated the recordkeeping requirements of, and associated rules and regulations under, the FLSA with respect to Plaintiff Baten's, and the FLSA class members', compensation, hours, wages, and any deductions or credits taken against wages;

(e) Declaring that Defendants' violation of the provisions of the FLSA were willful as to Plaintiff Baten and the FLSA class members;

(f) Awarding Plaintiff Baten and the FLSA class members damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA, as applicable;

(g) Awarding Plaintiff Baten and the FLSA class members liquidated damages in an amount equal to 100% of his damages for the amount of unpaid minimum and overtime wages, and damages for any improper deductions or credits taken against wages under the FLSA as applicable pursuant to 29 U.S.C. § 216(b);

(h) Declaring that Defendants violated the overtime wage provisions of, and rules and orders promulgated under, the NYLL as to Plaintiff Baten and the members of the FLSA Class;

(i) Declaring that Defendants violated the Spread of Hours Wage Order of the New York Commission of Labor as to Plaintiff Baten and the members of the FLSA Class;

(j) Declaring that Defendants violated the recordkeeping requirements of the NYLL with respect to Plaintiff Baten's, and the FLSA Class members', compensation, hours, wages; and any deductions or credits taken against wages;

(k) Declaring that Defendants' violations of the New York Labor Law were willful as to Plaintiff Baten and the FLSA Class members;

(l) Awarding Plaintiff Baten and the FLSA class members damages for the amount of unpaid minimum and overtime wages as well as spread of hours pay;

(m) Awarding Plaintiff Baten damages for Defendants' violation of the NYLL notice and recordkeeping provisions, pursuant to NYLL §§198(1-b), 198(1-d);

(n) Awarding Plaintiff Baten and the FLSA class members liquidated damages in an amount equal to one hundred percent (100%) of the minimum wage, spread of hours pay and overtime compensation shown to be owed pursuant to NYLL § 663 as applicable;

(o) Awarding Plaintiff Baten and the FLSA class members pre-judgment and post-judgment interest as applicable;

(p) Awarding Plaintiff Baten and the FLSA class members the expenses incurred in this action, including costs and attorney's fees;

(q) Providing that if any amounts remain unpaid upon the expiration of ninety days following issuance of judgment, or ninety days after expiration of the time to appeal and no appeal is then pending, whichever is later, the total amount of judgment shall automatically increase by fifteen percent, as required by NYLL § 198(4); and

(r) All such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Baten demands a trial by jury on all issues triable by a jury.

Dated: New York, New York
November 30, 2016

MICHAEL FAILLACE & ASSOCIATES, P.C.

/s/ Michael Faillace

By: Michael A. Faillace [MF-8436]
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November 28, 2016

BY HAND

TO: Clerk of Court,

I hereby consent to join this lawsuit as a party plaintiff.
(Yo, por medio de este documento, doy mi consentimiento para formar parte de la demanda como uno de los demandantes.)

Name / Nombre: **Jesler Gudiel Baten Rojas**

Legal Representative / Abogado: Michael Faillace & Associates, P.C.

Signature / Firma: [signature]

Date / Fecha: 28 de noviembre de 2016